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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,139	12/04/2003	Johji Nakamoto	JP9-1999-0277-US2	6730
7590	05/01/2007			
Robert A. Walsh IBM Corporation IP Law Department, 972E 1000 River Street Essex Junction, VT 05452			EXAMINER ZHENG, LOIS L	
			ART UNIT 1742	PAPER NUMBER
			MAIL DATE 05/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

10/728,139

DATE MAILED:

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 10/728,139 ^{219/07} is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☐ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

☒ 8. Other reasons: See attachment

Note: If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

A copy of this notice MUST be returned with any reply.

Direct the reply and any questions about this notice to:

Lois Zheng, Examining Group AU 1792
(571) 272-1248
(703) 900-
FORM PTO-2051 (Rev. 3/2001)

Art Unit: 1742

According to MPEP 706.07(h), applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions). See 37 CFR 1.145. Any newly submitted claims that are directed to an invention that is independent and distinct from the invention previously claimed will be withdrawn from consideration and not entered.

In this case, applicant had canceled previously elected apparatus claims, amended and added a set of method claims that are directed to previously non-elected method claims, which is not allowed for the reasons described above. Therefore, this Request for Continued Examination (RCE) filed on 9 February 2007 is considered defective.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lois Zheng whose telephone number is (571) 272-1248. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LLZ

ROY KING
SUPERINTENDING PATENT EXAMINER
TECHNICAL CENTER 1700